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MINUTES
ESHB 1397 RULE ADVISORY COMMITTEE
July 21, 2005

Introductions: Advisory Committee members in attendance included: Sarah Rees, Bob Saunders, Ron Shultz, William Wright, Thalia Brown, Carrie Nyssen, Dave Kircher, Dale Brown, Steve Douglas, Janet Ray, Bryan Imai, Kathryn Vasquez, John Creedon and Robert Pregulman; John Cabaniss participated via phone. Additional attendees included, Nancee Wildermuth, Rick Jensen, Gordon Walgren, Kelly Green and Brett Rude.

Absent: Bob Bridge, Chris Marr, Theresa Gamble, and K.C. Golden.

Review of June 14, 2005 advisory committee minutes: The committee raised two questions regarding minutes of the past meeting. First, the minutes indicate it is the governors' intent for Ecology to move forward with ruling making even though Oregon has not adopted California motor vehicle emissions standards. The committee sought clarity as to how Ecology ascertained the governors' intent. Ron Shultz told the committee that Director Jay Manning discussed the matter with the governor directly and that Ecology staff discussed the matter with the governors' staff Keith Phillips and Tom Fitzsimmons.

The committee also inquired as to Oregon's progress adopting California motor vehicle emissions standards. Sarah Rees, Ron Shultz and Bob Saunders shared they have heard nothing definitive but that staff from Oregon Department of Environmental Quality have said they are moving forward with the effort.

Review draft rule: Bob Saunders led the committee through a section-by-section review and discussion of the draft rule, Chapter 173-423 WAC Low Emission Vehicles. For each section, highlights of the discussion as well as concerns and recommendations follow.

173-423-010 Purpose. No discussion, concerns or recommendations.

173-423-020 Applicability. Bob Saunders pointed out that ESHB 1397 is written in such a way that medium duty passenger vehicles i.e., SUVs must be California certified but that medium duty trucks would be exempt, thus splitting in half the medium duty weight class. Ecology believes this split, 1) creates administrative challenges for licensing staff and, 2) may be a section 177 violation. Based on these concerns, Bob stated that Ecology prefers the rule include medium duty trucks, but wrote the draft rule to mirror the statute language and wanted to discuss this issue with the committee before interpreting the statute farther. In response to a question on whether we could make this change, Bob explained that rules often do have to interpret statutory intent in order to have an orderly implementation, but that there's no absolute formula for how much change is permissible.

Some members agreed about the potential for confusion and there was some discussion over whether this could be handled adequately. Manufacturers acknowledged some potential for confusion, but also expressed concern about cost implications of including trucks. Other members thought these trucks was a matter of concern for the legislature

and expressed concern with going beyond the bill. Ecology mentioned that the intensity of the debate over heavier trucks indicated that the legislature thought it was including heavier pick-up trucks under California standards.

The issue was left for further consideration and discussion by committee representatives with their constituency.

WAC 173-423 Applicability says the chapter applies to all 2009 vehicles except as provided by 060 Exemptions "...or other sections of this chapter." One committee member suggested replacing this language with the specific other sections that effectively create exemptions. Ecology will make the suggested change.

173-423-025 Effective date. Several committee members expressed concern with linking an effective date to Oregon adopting the California standards and some proposed using the statutory language to explain the Oregon connection. Ron Shultz explained the legal need to include a "date certain". The committee agreed that, because of the Oregon link, a "date certain" was elusive for the time being. We agreed to remove the Oregon connection from the language and leave the effective date blank until the situation in Oregon is clearer.

173-423-030 Incorporation by reference. The committee expressed considerable frustration with finding California rules on-line and expressed that the incorporated by reference rules should be readily accessible for the public. Ron Shultz expressed that the rule must clearly identify, for each section, the version of the California rule incorporated by reference.

Ecology agreed to provide a link to the California rules on Ecology's website and to make sure the rule language clearly identifies which California sections are incorporated by reference and when they apply in WA

173-423-040 Definitions and abbreviations. Bob explained Ecology's intention to keep the definitions to a minimum since many are covered in section 1900 of the California code. The committee agreed with the need to avoid conflicting definitions between Ecology, Department of Licensing and California, but some members thought definitions were usually important for informing the public in a clear and meaningful way. Ecology agreed to further develop the definitions with these concerns in mind. NMOG should be fully spelled out the first time it is used.

173-423-050 Requirement to meet California vehicle emission standards. Bob explained the cross-over from this section to Table XX in WAC 173-423-070. Overall, the committee felt this section may be duplicative of 070 but had no concern with either deleting this section or keeping both sections.

One committee member reiterated their concern with adopting California's pending greenhouse gas provisions. They again cite the HB 1397 as adopting the California standards as of January 1, 2005 and that the California standards at that time did not include Pavley.

They also believe section 177 clearly precludes Ecology from adopting the Pavley provisions prior to EPA issuing California a waiver.

Ecology reiterated its belief that the legislature clearly intended to adopt the greenhouse gas provisions. Ecology has also spoken with other opt-in states regarding the waiver issue and shared this with the committee. Other states find that section 177 precludes states from enforcing but not adopting California provisions prior to EPA issuing a waiver. One committee member cited MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., v. NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION where the second circuit court of appeals found that New York could adopt but not enforce California vehicle emissions standards.

The committee agreed there is no dispute regarding the enforcement issue.

Committee pointed out that 050(1) should read, "...for use in Washington..." or in line with previous discussion, "...titled and registered in Washington..." Ecology will make the suggested change.

173-423-060 Exemptions. In general, there was considerable sentiment that exemptions represent potential loopholes and that exemptions provided should be limited and clearly needed. Committee discussion indicated that the following exemptions may not be needed:

- (1) Vehicles designed exclusively for off-highway use.

DOL will look further into the vehicles or vehicles types to which this would apply.

- (6) Vehicles sold for the purpose of being wrecked or dismantled.

Exemption may not be needed, title may change, but these vehicles are not typically registered.

- (8) Vehicles not requiring licensing or licensed for restricted highway use.
- DOL will look further into the vehicles or vehicles types to which this would apply.

- (10) A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident that was damaged or became inoperative beyond reasonable repair or was stolen while out of this state, provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen

The committee expressed concern about certifying or verifying "...inoperative beyond reasonable repair..." They suggested there was a need for a formal collision report, stolen vehicle report, or insurance destroyed etc.

Ecology agreed to work with other states and the Department of Licensing to further explore the need of these exemptions.

173-423-070 Emission standards, warranty, recall and other California provisions adopted by reference. One member reminded the committee of his concern regarding the greenhouse gas provisions, see above discussion. See also, discussion above re: WAC 173-423-030 Incorporation by reference.

173-423-080 Fleet average non-methane organic gas exhaust emission requirements and reporting.

Ecology agreed to reconsider this provision.

173-423-090 Fleet average greenhouse gas exhaust emission requirements and reporting. One member reminded the committee of his concern regarding the greenhouse gas provisions, see above discussions.

One member felt that the approach to earning fleet average credits in the Ecology draft (and the RI and CT rules) left the manufacturers at a significant disadvantage relative to California. Manufacturers requested essentially that debits for not meeting the fleet average not apply until after manufacturers have had the opportunity to earn up to three years of credits as they are able to do in California. Ecology and manufacturers are to discuss issue further before next meeting.

173-423-100 Manufacturer delivery reporting requirements. One committee member suggested adding "Upon request by the Department of Ecology..." to the first sentence which pertains to manufacturers submitting reports to Ecology. One committee member suggested deleting -100(2) re: reporting projected vehicle deliveries by engine family. The member felt the reports projections provide no value in terms of air quality and placed an additional burden on manufactures, which in the end would not be accurate at any rate. Ecology agreed to consider this addition.

Ecology reiterated the concern with splitting in half the medium duty weight class, as discussed in the 173-423-020 Applicability section of these minutes, however noted that the fourth bullet of -100(2) is intended to provide licensing agents with a tool to determine which vehicles in the 8500-14,000 GVWR are not required to be California certified.

~~173-423-110 Fleet average non-methane organic gas and greenhouse gas exhaust emission enforcement.~~

Note: In the July 19 draft, the contents of section 173-423-110 Fleet average non-methane organic gas and greenhouse gas exhaust emission enforcement (the July 14 draft) were incorporated into sections 173-423-080 Fleet average non-methane organic gas exhaust emission requirements and reporting and 173-423-090 Fleet average greenhouse gas exhaust emission requirements and reporting. The numbering, however, was not adjusted accordingly. Ecology will adjust the numbering in the next draft rule.

173-423-120 Warranty requirements. One committee member expressed concern with the language "...provide a telephone number appropriate for the State of Washington", stating that manufacturers use 1-800- numbers. Ecology agreed to review the language.

One committee member suggested adding a third section to 120 that Rhode Island included in their rule. The suggested addition would require that manufacturers provide Ecology, upon request, with a report on the failure of emission-related components.

Ecology will add the suggested provision.

173-423-130 Recalls. One committee member expressed concern with language "...provide a telephone number appropriate for the State of Washington", stating that manufacturers use 1-800- numbers. Ecology agreed to review the language.

173-423-140 Surveillance. There was some concern with the need for inspections of dealers and what it would accomplish. Bob explained the goal was to have some capability to identify and correct any "wholesale" evading of the rules. Ecology agreed to provide more explanation about how this might work and why provision is needed.

The committee discussed numerous scenarios that may be difficult to enforce against and that may not be found in surveillance. Several members felt that private party transactions and the sale of pre-owned cars with < 7500 miles will be most difficult. One committee member suggested that some dealers may simply put miles on the car until it exceeds the 7500 mile threshold.

Some members did not like the notice required in subsection 2 and suggested Ecology further explore California's requirement for window labeling.

The committee agreed this issue requires on-going discussion and there are numerous challenges associated with implementing the rule.

173-423-150 Enforcement. The committee generally agreed that there must be some penalty provision, but there was concern over the amount of the penalty and whether it would be applied to fairly minor infractions. Several committee members felt there should be some distinctions between minor versus severe offenses and first-time versus repeat offenders, etc.

Ecology explained that this is usually a matter of policy within each agency and that Ecology considers such factors in the enforcement process. Ecology agreed to provide the committee with agency enforcement policy that explains the factors considered when assessing and setting penalty amounts.

173-423-160 Severability. No discussion, concerns or recommendations.

Additional issues and concerns:

Issue 1: Throughout WAC 173-423 the phrase "...for sale in Washington" or variations thereof are used. One committee member suggested that this places a certain liability on the seller of the vehicle to ascertain the intent of the buyer. Department of Licensing staff suggested using "...for titling and registration in Washington" or a variation thereof.

Ecology will consider incorporating the suggested change.

Issue 2: Re: fleet average compliance, do federal cars count in the calculation? In a related manner, do cars delivered to a Washington dealer that are destined for sale outside of Washington count in the fleet average calculation?

Ecology will further investigate these with California.

Issue 3: Is it illegal for a dealer to take a non-California certified vehicle with less than 7500 miles in on trade?

Ecology will explore the issue with California.